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In the Supreme Court of the United States

October Term, 1957

SAMUEL GOLDMAN and ROBERT D. QUIRK,

Petitioners,

v.

UNITED STATES OF AMERICA

On Petition for a Writ of Certiorari to the United States Court of Appeals for the First Circuit

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BRIEF FOR THE UNITED STATES IN OPPOSITION

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In the Supreme Court of the United States

OCTOBER TERM, 1957

No. 755

SAMUEL GOLDSTEIN and ROBERT D. QUIRK,
PETITIONERS

v.

UNITED STATES OF AMERICA

On Petition for a Writ of Certiorari to the United States Court of Appeals for the First Circuit

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BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Appeals (Pet. App. 24-28; R. 335-339) is not yet reported.

JURISDICTION

The judgment of the Court of Appeals was entered on December 26, 1957 (R. 339-340). Petitions for rehearing were denied on January 9, 1958 (R. 349). The petition for a writ of certiorari was filed on January 30, 1958. The jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1).

QUESTION PRESENTED

Whether there was sufficient evidence to warrant submission of the question of petitioners' guilt to the jury.

STATEMENT

Petitioners were found guilty under two separate indictments charging them with a conspiracy [1] to violate federal internal revenue laws relating to alcohol and with substantive violations of those laws (R. 4-7, 307, 319-320, 327-328). Petitioner Goldstein was sentenced to concurrent terms of imprisonment of eight months under each indictment and a fine of $1500 under the substantive indictment (R. 314-315, 330). Petitioner Quirk was sentenced to terms of imprisonment of two years under each indictment, with execution of the sentences suspended during concurrent probationary periods of three years. Under the substantive indictment, he was also fined $1,000 (R. 313-314, 322-323). On appeal, the Court of Appeals affirmed the judgments of conviction (R. 339-340).

The following evidence was adduced at the trial:

In September 1953, petitioner Goldstein ordered the manufacture of a boiler tank specially designed according to his specification. It was of the type used in the distillation of alcohol, known as a "still pot" or "cooker." Later, he ordered the manufacture of several rectangular tanks or vats. He paid cash for

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[1] Charges as to three others named in the conspiracy indictment were dismissed by the trial judge for insufficient evidence.

them and accepted delivery at the manufacturing plant. At the time, he told the manufacturing company that the tank was to be used in a laundry somewhere in South Boston (R. 52-65, 109-110). These items were subsequently found to be an integral part of an illegal distillery located in a barn on a farm owned by petitioner Quirk and his mother (R. 33-37).

The distillery was discovered by investigators of the Alcohol and Tobacco Tax Division, Internal Revenue Service, after they had detected an odor of mash emanating from the Quirk farm on February 19 and 20, 1954. At that time the investigators saw three men coming out of the barn, but they could not recognize them (R. 32-33). As a result, on February 23, 1954, the investigators, armed with a search warrant, went to the farm. Unable to locate anyone there, they forced an entry into the building from which the odor of mash emanated. There they discovered a complete still set up for the distillation of alcohol. This included a boiler powered by an oil burner, two 275 gallon oil tanks, a still pot or cooker, a copper column extending from the cellar to the attic of the building, water pressure tanks, a pump, condensers, a rectangular tank containing alcohol and several other rectangular tanks containing mash. The distilling apparatus had been turned off but it was still hot. Mash was running out of the pipes and back to the floor and out of the rear of the building. The inspectors also found five-gallon cans, some of which contained alcohol and some of which were empty, 100-pound bags of sugar, dry yeast and ammonia

(R. 10-12, 15-16, 22-23, 24-26, 33-34, 36, 66, 68, 73-74, 182-185, 191, 193, 196). Electricity into the barn was supplied by an underground cable which ran to the house occupied by Quirk's parents (R. 213). The electricity was charged to and paid for by Quirk. From December 1953, the use of electricity on the Quirk farm had increased appreciably (R. 104).

Quirk was arrested about an hour later when he returned to the farm (R. 34, 45-46). He refused to answer any questions except to deny that he had anything to do with the distillery. He said that he was unaware of the existence of the distillery despite the fact that his home was only a few hundred feet away from the barn where it was located (R. 230).

Quirk testified that he rented the barn on January 18, 1954 to one Joe Fuci for the storage of machinery, and that Fuci paid him $25 in advance for the first month's rental. He said that this was the only time he ever saw Fuci and that the rent was not paid the following month. He added that he did not know why Fuci wanted to store machinery in his building or what type of machinery it was. He said he did not see any smoke coming from the barn, nor detect any odors from that source (R. 210, 227-228, 254-256, 276, 277, 280). He denied knowing Goldstein (R. 279).

Petitioner Quirk actually ran the farm. Evidence was introduced showing that, in the fall of 1953, he had purchased electrical, plumbing and building equipment of the type which was found in the building where the distillery was located. These materials

could also have been used in building Quirk's home (R. 81-83, 84-88, 91-103, 209, 214, 228, 232).

Motions for judgments of acquittal were unsuccessfully filed in both cases (R. 307, 308, 313).

ARGUMENT

Petitioners' contention that the evidence does not support the verdict is bottomed on the fact that there was no direct proof of the relationship between the two petitioners. Since there was undoubtedly ample evidence to justify an inference that Quirk was implicated in operating an illegal distillery, the question is really limited to the sufficiency of the evidence to establish Goldstein's participation in a conspiracy with Quirk, and his consequent liability for the substantive offenses committed in furtherance thereof. *Pinkerton* v. *United States*, 328 U.S. 640.

It is settled, of course, that no formal agreement is essential to the formation of a conspiracy; a mutual implied understanding is sufficient. The agreement is generally a matter of inference deduced from acts, conduct, and attendant circumstances. *Glasser* v. *United States*, 315 U.S. 60; *United States* v. *Manton*, 107 F. 2d 834, 839 (C.A. 2), certiorari denied, 309 U.S. 664; *Telman* v. *United States*, 67 F. 2d 716, 717 (C.A. 10), certiorari denied, 292 U. S. 650. It is clear, too, that personal acquaintance of conspirators with each other is not necessary; it suffices if there is mutual understanding and cooperation in furthering the purposes of the unlawful enterprise. *Martin* v. *United States*, 100 F. 2d 490, 495-496 (C.A. 10), certiorari denied, 306 U. S. 649; *Jezewski* v. *United*

States, 13 F. 2d 599, 602 (C.A. 6), certiorari denied, 273 U. S. 735; *Allen* v. *United States*, 4 F. 2d 688, 691 (C.A. 7), certiorari denied, *sub nom. Mullen* v. *United States*, 267 U. S. 598.

Applying these principles here, the Court of Appeals properly found the evidence sufficient to warrant the jury in finding a conspiracy between the two petitioners. The evidence showed not only that Goldstein purchased the tank and vats, but that the equipment he purchased was specially designed; that he paid for it in cash and himself carted it away from the manufacturing plant; and that it turned up later as part of the distillery on Quirk's farm, for which Quirk had also purchased parts. The evidence also showed that Goldstein tried to conceal his purpose in buying the still. The jury had the right to infer that the relationship of these events was not fortuitous. No one fact would have been enough for a conviction, but together they presented a jury question. See *Direct Sales Company* v. *United States*, 319 U. S. 703; *United States* v. *Allard*, 240 F. 2d 840 (C.A. 3). And the verdict of the jury "must be sustained if there is substantial evidence, taking the view most favorable to the Government, to support it." *Glasser* v. *United States*, 315 U. S. 60, 80. The sufficiency of the evidence in this case, sustained by two courts below, presents no issue calling for review by this Court. *United States* v. *Johnson*, 319 U. S. 503, 518.

The trial court instructed the jury not to draw any adverse inference from petitioner Goldstein's failure to testify (R. 306-307). And the Court of Appeals did not, as petitioners claim (Pet. 19-20), draw such

an inference. The Court of Appeals merely noted that fact in its summary of the evidence.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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FEBRUARY 1958.